

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. On November 21, 2000, the United States Department of Agriculture (USDA) issued a final rule amending Food Stamp Program regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and subsequent amendments to those provisions made by Public Laws 104-208, 105-33, and 105-185. These regulations are also known as the Noncitizen Eligibility and Certification Provisions, Federal Register, Vol. 65, No. 225, November 21, 2000 (65 Federal Register 70134). Those rules became effective on January 20, 2001 and have been issued on an emergency basis effective June 1, 2001. However, included within the final federal rules were specific provisions that were subject to Office of Management and Budgets (OMB) approval before they could be implemented. The rules that were subject to OMB approval are required to be implemented no later than 180 days after OMB approves them. OMB approved those regulations on September 9, 2001. The Department was notified of OMB approval on November 28, 2001, Federal Register, Vol. 66, No. 229, which further limited the amount of time to implement the OMB rules. Implementation by March 1, 2002 is necessary to comply with the 180-day implementation requirement. Therefore, these regulations must be filed on an emergency basis.
2. The regulation changes are beneficial to applicants and recipients of the Food Stamp Program. They include less restrictive application procedures for scheduling application interviews, and they mandate that an application cannot be denied prior to the 30th day of application. This ensures that county welfare departments (CWDs) hold the application for 30 days before taking action against the household. The OMB-approved rules also safeguard the recipient's right to be notified in advance of the county taking action to terminate the case. The CWD must clearly notify the food stamp household of any information that is needed, and allow 10 days for the household to respond before any action can be taken against the household, such as termination of benefits.
3. There is also a new requirement for determining whether a sponsored noncitizen is considered indigent. That is, a determination must be made by the CWD on whether the noncitizen's income, including income given to the sponsored noncitizen by the sponsor, exceeds 130 percent of the poverty guideline for the household size. This regulation clearly specifies that if the income is below 130 percent of the poverty level, the sponsored noncitizen is considered indigent without adequate income to obtain food and shelter. When the sponsored noncitizen is found to be indigent, only the actual income the sponsored noncitizen receives directly from the sponsor or others is counted as income. This effectively eliminates the deeming of income requirement of the sponsor to the sponsored noncitizen when income of the sponsored noncitizen is less than 130 percent of

the poverty guideline. Deeming of income to the sponsored noncitizen from the sponsor will now only occur when the income of the sponsored noncitizen exceeds 130 percent of the poverty guideline. This new indigent determination will provide sponsored noncitizens, who find themselves in a situation where they are unable to obtain food and shelter with a means to meet their basic needs.

4. The nonemergency rulemaking process set forth in the Administrative Procedures Act is sufficiently lengthy that it is not possible to implement regulation changes on an immediate basis as necessary to protect the health and safety of applicants and recipients of the California Work Opportunity and Responsibility to Kids and the Food Stamp Program.
5. Delay in the implementation of these regulations would put CDSS at risk of legal action that could be brought by individuals who have not been granted benefits due to the failure of CDSS to implement these regulations in a timely manner. The Department would be out of compliance with USDA mandates if implementation is delayed.
6. These regulation changes are necessary to safeguard the application-processing time frames for applicants. It also safeguards the amount of time to be provided to a recipient for clarification of any unclear information that the CWD could act upon to terminate the food stamp household. The regulations are also necessary to provide adequate assistance to sponsored noncitizens who find themselves in a situation where basic needs are not provided by their sponsor. It guarantees that the indigent sponsored noncitizen receives adequate assistance in the food stamp program.
7. Counties will be burdened if filing of emergency is not timely. Counties would need to flag cases and act by providing retroactive benefits to recipients. This procedure is extremely cumbersome and administratively complex. The Food and Nutrition Service provided changes in these regulations to safeguard applicants who are initially applying for food stamp assistance, and recipients who are renewing, through the recertification process, their eligibility for food stamp benefits. It is imperative that these regulations are implemented by the effective date of March 1, 2002.

INFORMATIVE DIGEST

On November 21, 2000, the United States Department of Agriculture issued a final rule amending Food Stamp Program regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and subsequent amendments to those provisions made by Public Laws 104-208, 105-33, and 105-185. These regulations are also known as the Noncitizen Eligibility and Certification Provisions, Federal Register, Vol. 65, No. 225, November 21, 2000 (65 Federal Register 70134). Those rules became effective on January 20, 2001 and have been issued on an emergency basis effective June 1, 2001. However, included within the final federal rules were specific provisions that were subject to Office of Management and Budgets (OMB) approval before they could be implemented. OMB approval is provided in Federal Register, Vol. 66, No. 229 of November 28, 2001. The approved rules are required to be implemented no later than March 10, 2002. For CWD administrative ease of implementation, the Department has opted to implement on March 1, 2002 for all new applications; for ongoing cases implementation must take place no later than by the next recertification.

The regulation changes are beneficial to applicants and recipients of the Food Stamp Program. They include less restrictive application procedures for scheduling application interviews, and they mandate that an application cannot be denied prior to the 30th day of application. The regulations discuss the procedure for scheduling the initial application interview and the procedures the CWD must follow to allow for a second interview. If the applicant misses its first interview scheduled by the CWD, it is the household's responsibility to reschedule a second interview. When the first scheduled interview is missed, the CWD is required to send a Notice of Missed Interview informing the applicant that the interview was missed, that the applicant is responsible for rescheduling and the consequences of failure to reschedule within 30 days of the application date. If the household reschedules the interview within the 30 days of application, the application is not denied. If the household does not reschedule the interview within the 30-day processing time frame, the CWD can then issue a denial notice to be sent on the 30th day following the application date. This ensures that the CWD holds the food stamp application open throughout the application processing time frame of 30 days.

Another procedure that is required during the 12-month certification period is the use of a request for information (RFI). If during the certification period, the CWD receives any information that is unclear or that could compromise the household's eligibility, the CWD must first issue an RFI to the recipient and allow at least 10 days for the recipient to respond to the request. This procedure is important because it mandates that the CWD contact the household through a general notice request and allow the household 10 days to respond prior to the CWD being allowed to send a termination notice. This is beneficial to the recipient because it provides time for the recipient to avoid any adverse actions.

There is also a new requirement for determining whether a sponsored noncitizen is considered indigent. That is, a determination must be made by the CWD on whether the noncitizen's income, including income given to the sponsored noncitizen by the sponsor, exceeds 130 percent of the poverty guideline for the household size. This regulation clearly specifies that if the income is below 130 percent of the poverty level, the sponsored noncitizen is considered indigent. That is, without adequate income to obtain food and shelter. When the sponsored noncitizen is found to be indigent, only the actual income the sponsored noncitizen receives is used to compute their food stamp benefits. When the sponsored noncitizen's income is above 130 percent of the poverty guideline, then the sponsor's income must be deemed to the sponsored noncitizen. This requirement for the CWD to first determine if the sponsored noncitizen is indigent provides the noncitizen with adequate means to obtain food and shelter.

COST ESTIMATE

1. Costs or Savings to State Agencies: No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law or regulations.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law or regulations.

4. Federal Funding to State Agencies: No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law or regulations.

LOCAL MANDATE STATEMENT

These regulations impose a mandate upon county welfare departments but not on school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because these regulations implement the Federal mandate contained in 7 CFR Sections 273.2, 273.4 and 273.12, and Federal Register, Vol. 66, No. 229, November 28, 2001.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific 7 CFR 273.2(e)(1), (e)(3) and (f); 7 CFR 273.4(c)(3)(iv); 7 CFR 273.12(c)(3)(i), (ii) and (iii); and Federal Register, Vol. 66, No. 229, dated November 28, 2001.